

REMARKS

Claims 2-4 and 6-16 are pending. Claims 4 and 14-16 are amended herein.

Claims 2-4, 6-10 and 12-16 are indicated as being allowable under conditions stated in the instant Office Action. Applicants thank the Examiner for indicating the allowability of Claims 2-4, 6-10 and 12-16.

Double Patenting

The instant Office Action states that Claims 2-4, 6-10 and 12-16 are provisionally rejected under the judicially created (nonstatutory) doctrine of obviousness-type double patenting as being unpatentable over copending Application No. 10/245,172. A terminal disclaimer in compliance with 37 CFR § 1.321 is being submitted concurrent with the instant response, thereby obviating the double patenting rejection.

101 Rejections

The instant Office Action states that Claims 2-4 and 6-16 are rejected under 35 U.S.C. § 101 because the invention is directed to nonstatutory subject matter.

In *In Re Lowry* (32 F.3d 1579, 32 U.S.P.Q. 2d 1031; Fed. Cir. 1994), the Federal Circuit ruled that an “electronic structure,” constructed as a memory containing information stored in a particular arrangement, can serve as the basis for a patentable invention. The Federal Circuit determined that the claimed data structure was a physical entity having specific electrical or magnetic elements in memory. The court considered that the Lowry data structure imposed a physical organization on the data, and found that stored data existing as a collection of bits having information about data relationships

may constitute patentable subject matter. Lowry asserted that a memory containing data organized by the claimed data structure permits a computer to efficiently access and to use the stored data, and thus the data structure had tangible benefits.

The Examiner is also respectfully directed to MPEP § 2106, in particular Section IV.B.1, which states “[w]hen functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.”

In view of *In Re Lowry*, Applicants respectfully submit Claims 2-4 and 6-16 are directed to patentable subject matter. As such, Applicants respectfully request that the rejection of those claims under 35 U.S.C. § 101 be withdrawn.

112 Rejections

Claims 14-16

The instant Office Action states that Claims 14-16 are rejected under 35 U.S.C. § 112, first paragraph. Applicants respectfully submit that, as amended, Claims 14-16 satisfy the requirements of 35 U.S.C. § 112, first paragraph, and as such, Applicants respectfully request that the rejection of those claims under 35 U.S.C. § 112, first paragraph, be withdrawn.

Claims 2-4, 6-9 and 14-16

The instant Office Action states that Claims 2-4, 6-9 and 14-16 are rejected under 35 U.S.C. § 112, second paragraph. Applicants respectfully submit that, as amended, Claims 2-4, 6-9 and 14-16 satisfy the requirements of 35 U.S.C. § 112, second paragraph, and as such, Applicants respectfully

request that the rejection of those claims under 35 U.S.C. § 112, second paragraph, be withdrawn.

Conclusions

In light of the above remarks, Applicants respectfully request reconsideration of the rejected claims.

Based on the arguments presented above, Applicants respectfully assert that Claims 2-4 and 6-16 overcome the rejections of record and, therefore, Applicants respectfully solicit allowance of these claims.

The Examiner is invited to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,

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